IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

JAMES M. MINGA and
BARBARA GAIL MINGA
Plaintiffs

V. NO. 2:97-CV-249-B-B

JEFFERSON PILOT LIFE INSURANCE
COMPANY and ENTERGY INTEGRATED
SOLUTIONS, INC.
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the defendants' motion for summary judgment. Upon due consideration of the parties' memoranda and exhibits, the court is ready to rule.

FACTS

The plaintiff James Minga was an employee of the defendant Entergy Integrated Solutions (hereafter referred to as "EIS") and as such, was a participant in EIS' medical insurance and health benefit plan (hereafter referred to as "the plan") which was administered by the defendant Jefferson Pilot. It is undisputed that the plan is regulated by the Employee Retirement Income Security Act ("ERISA"), codified at 29 U.S.C. § 1001 et seq. The plan provided benefits for James' wife, the plaintiff Barbara Minga. In March of 1996, Barbara was admitted to Baptist Memorial Hospital in Southaven, Mississippi, with gastrointestinal hemorrhage, nausea, vertigo, sleep apnea, dehydration and other related ailments. Her claim for medical insurance coverage was denied. Barbara's physician, Dr. George Cowan, determined that she was in need of surgery, so he sent a letter to Jefferson Pilot dated April 2, 1996, asking that she be pre-certified for the surgery. Dr. Cowan's letter stated that Barbara was suffering from complications associated with previous bariatric surgery. He listed her recent problems as chronic chest pain, chronic hypertension, obstructive sleep apnea, sleep orthopnea, hiatal hernia, pain and edema throughout her body, shortness of breath, constipation, diarrhea, depression,

tiredness, irritability, suicidal feelings, nervousness, sinus problems, chronic headaches, stomach ulcers indigestion and irregular menstruation. Dr. Cowan stated that revisional surgery was necessary to resolve or ameliorate the multiple complications associated with prior bariatric surgery. Dr. Cowan's letter made no mention of weight reduction or treatment for obesity, though he did note that Barbara stood 65 inches tall and weighed 355 pounds.

The plan specifically excludes coverage for treatment for obesity, weight reduction, or weight control. However, the plan does not exclude coverage for treatment to alleviate complications arising from previous bariatric surgery. After a lengthy review of Barbara's medical history and Dr. Cowan's letter, Jefferson Pilot refused the request on the basis that treatment for obesity and weight reduction was not covered under the plan. On September 20, 1996, Dr. Cowan again wrote to Jefferson Pilot seeking coverage for the proposed surgery. Jefferson pilot rejected Dr. Cowan's second request by letter dated September 21, 1996. Dr. Cowan made a third request by letter dated October 18, 1996, which was nearly identical to Dr. Cowan's second letter. In response, Jefferson Pilot simply faxed Dr. Cowan a copy of its response to the second request. Barbara's condition worsened to the point that in February of 1997, she was re-admitted to the hospital and surgery was scheduled as a life-saving decision. Although the surgery in February of 1997 was identical to that Dr. Cowan had been seeking clearance to perform for ten months, Jefferson Pilot agreed to provide coverage, deciding that the proposed surgery was necessary to correct present complications resulting from prior surgery.

The plaintiffs subsequently filed suit alleging denial of benefits and discrimination in violation of ERISA as well as asserting state law claims for negligent investigation of an insurance claim, tortious interference with the physician/patient relationship, breach of contractual obligations, and bad faith delay in providing insurance coverage. This court previously dismissed the plaintiffs' state law claims, as well as the plaintiffs' claims for extra-contractual and punitive damages by order dated August 4, 1998. The plaintiffs' remaining claims consist of a claim against both defendants for denial of benefits under ERISA and a claim of discrimination against the defendant EIS.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

A. Claim for Denial of Benefits

The defendants maintain that the plaintiffs can only sue to recover benefits due under the plan, and since the plan paid for the surgery in February of 1997, the plaintiffs have no viable cause of action. The ERISA statute provides that a civil action may be brought:

> (1) by a participant or beneficiary--
>
> > (B) to recover benefits due to him under the terms of his plan, to enforce rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

29 U.S.C. § 1132(1)(B). The defendants assert that the surgery performed by Dr. Cowan in February of 1997 was identical to that he had been seeking pre-certification for since April of 1996. Thus, according to the defendants, since the plan paid for the procedure, there are no

further benefits due. In their response to the defendants' motion, the plaintiffs fail to address this issue and offer no citation of law to contest the defendants' argument regarding the limited relief available under ERISA. The court likewise can find no law to the contrary. The Fifth Circuit has repeatedly held that claims for extra-contractual and punitive damages are not available remedies under ERISA. Medina v. Anthem Life Ins. Co., 983 F.2d 29, 31-33 (5th Cir. 1993), cert. denied, 510 U.S. 816, 126 L. Ed. 2d 35 (1993); Corcoran v. United Healthcare, Inc., 965 F.2d 1321, 1334-1338 (5th Cir. 1992), cert. denied, 506 U.S. 1033, 121 L. Ed. 2d 684 (1992); see Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 87 L. Ed. 2d 96 (1985) (denying plaintiff's claim for improper or untimely processing of benefit claims); see also Suggs v. Pan Am. Life Ins. Co., 847 F. Supp. 1324, 1338-1340 (S.D. Miss. 1994). As aforementioned, the court has previously dismissed the plaintiffs' claim for extra-contractual benefits, leaving only the contractual claim for benefits denied. The defendants assert that no benefits have been denied and the plaintiffs offer no evidence to the contrary.[1] Accordingly, the court finds that the plaintiffs' claim for denial of benefits should be dismissed.

B. Claim for Discrimination

The plaintiffs assert that defendant EIS discriminated against Barbara on account of her obesity in violation of 29 U.S.C. § 1140. However, the purpose of § 1140 is to prevent employers from discharging employees in order to avoid paying benefits. The statute provides that: [i]t shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan...or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan. 29 U.S.C. § 1140. See Rogers v. International Marine Terminals, Inc., 87 F.3d 755, 761 (5th Cir. 1996) (to establish a prima facie case under § 1140, plaintiff must prove that defendant, acting with specific discriminatory intent, retaliated against him for filing medical claims or interfered with

[1] In their complaint, the plaintiffs do mention that they purchased, at their own expense, a machine to control Barbara's sleep apnea. However, the claim for the cost of the sleep apnea machine is too vague to be considered.

his rights under the plan). There is no evidence that the defendant in any way discriminated against the plaintiffs for exercising their rights or to avoid paying a claim, nor do the plaintiffs make such an allegation. The plaintiffs simply assert that discrimination is the failure to treat all persons equally where there is no reasonable distinction and that the defendant treated Barbara differently in April of 1996 than in February of 1997. The court finds that the plaintiffs have failed to present any evidence that the defendant EIS discriminated against them in violation of 29 U.S.C. § 1140, and therefore the plaintiffs' claim for discrimination should be dismissed.

C. Defendants' Claim for Attorney's Fees

ERISA grants the court discretionary authority to award attorney's fees and costs to the prevailing party. 29 U.S.C. § 1132(g)(1). In considering an award of fees and costs, the court must weigh the following five factors: (1) the degree of the opposing parties' culpability or bad faith; (2) the ability of the opposing party to pay the award; (3) whether an award of fees and costs would deter other persons acting under similar circumstances; (4) whether the party requesting the fees sought to benefit all plan participants or resolve a legal question regarding ERISA; and (5) the relative merits of the parties' positions. Iron Workers Local No. 272 v. Bowen, 624 F.2d 1255, 1266 (5th Cir. 1980). In considering all five factors, the court finds that an award of fees and costs is not warranted. Of particular relevance, the court finds no evidence of bad faith on behalf of the plaintiffs and no evidence that the plaintiffs could pay an award of fees and costs. Accordingly, the court finds that the defendants' request for an award of fees and costs should be denied.

CONCLUSION

For the foregoing reasons, the court finds that the defendants' motion for summary judgment should be granted. An order will enter accordingly.

THIS, the ____ day of _____, 1999.

_____
NEAL B. BIGGERS, JR.
CHIEF JUDGE